IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.T.R. No.126 of 1992
Date of decision: 14. 11.2006

The Commissioner of Income Tax, Patiala.

---Applicant

Vs.

M/s Chandika Press Pvt. Ltd., Chandigarh.

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. S.K. Garg Narwana, Advocate
for the revenue.

ORDER:

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its order dated 03.04.1991 in I.T.A. No.1493/Chandi/89 in respect of assessment years 1985-86:-

> "Whether on the facts and in the circumstances of the case, the Tribunal erred in directing that the expenditure as well as receipts in their totality should be taken into account while applying the provisions of section 37 (3A) of the Income-tax Act, 1961 in the case of the assessee?"

The assessee is printing and publishing a magazine known as "Competition Master" since 1972. It advertises for its business and also receives advertisement revenue. The assessee received Rs.2,12,720/- on this account and incurred expenditure of Rs. 2,80,587/-. The Assessing Officer made disallowance of expenditure of Rs.41,802/- being 20% of the total expenditure in terms of Section 37(3A) of the Income-tax Act, 1961 (for short, "the Act"). Claim of the assessee that receipt of income on account of publishing the magazine should have been excluded from the advertisement expenditure was rejected by the Assessing Officer.

Order passed by the Assessing Officer was upheld by CIT(A).

On further appeal, the Tribunal held that the assessee was not advertising for the purpose of business, but advertisement itself was a part of its business and therefore, expenditure and receipts ought to have been taken in totality for applying Section 37 (3A) of the Act.

We have heard learned counsel for the revenue and perused the findings recorded.

The relevant provision of Section 37 (3A) of the Act as applicable at the relevant time, is as under:-

> "(3A) Notwithstanding anything contained in sub-section (1), where the expenditure or, as the case may be, the aggregate expenditure incurred by an assessee on any one or more of the items specified in sub-section (3B) exceeds one hundred thousand rupees, twenty per cent of such excess shall not be allowed as deduction in computing the income chargeable under the head "Profits and gains of business or profession."

A perusal of the above provision shows that for the purpose of disallowance, "expenditure" is to be taken into account which will mean net expenditure when on account of such expenditure income is also earned and when the Tribunal has found that the expenditure incurred was not for advertising of the business of the assessee but advertisement itself was assessee's business. The Tribunal was, thus, justified in holding that net expenditure had to be taken into account for calculating the disallowance under Section 37 (3A) of the Act.

Accordingly, the question referred is answered against the revenue and in favour of the assessee.

(ADARSH KUMAR GOEL)
JUDGE

November 14, 2006 **(RAJESH BINDAL)**
ashwani **JUDGE**